

BRIEF IN SUPPORT OF PETITION.

Jurisdiction.

Petitioners would invoke the jurisdiction of this Court under Sec. 240 (a) of the Judicial Code as amended by Act of February 13, 1925, U. S. C., Title 28, Sec. 347, to review the decree of the Court of Appeals for the Seventh Circuit entered April 25, 1940 (petition for rehearing denied June 14, 1940) (R. 436) affirming the decree of the District Court (Northern District of Illinois, Eastern Division) which held Respondent's patent No. 2,048,040 valid and infringed by certain of the devices manufactured and sold by Petitioners. This Petition is presented within the time allowed by statute.

Statement.

The foregoing Petition contains a summary of the material facts, any necessary amplification of which may be had upon inspection of the Appendix to this brief. The Petition also sets forth the reasons relied on for the allowance of the Writ as well as a statement of the questions involved.

It is our respectful contention underlying this Petition, that in view of Respondents' flagrant misuse of the patent grant, as well as the prior art, the patent in suit should be held invalid by this Honorable Court, and further, that Petitioners' notched-flange type of letter does not infringe.

Specification of Errors.

The Circuit Court of Appeals for the Seventh Circuit erred:

- (1) In failing to decree that the claims in suit numbers 4, 5, 6 and 8 are invalid in view of the prior art.
- (2) In relying on commercial success as the basis for resolving the doubt as to the validity of the patent in favor of Respondent, the patent owner, whereas the reprehensible conduct of Respondent in maintaining an utterly unwarranted campaign of threats and intimidation throughout an entire industry disentitled Respondent to such consideration and relief.
- (3) In failing to decree that Petitioners' notched-flange type of letter does not infringe any valid claims (if any) of the patent.
- (4) In ordering the entry of a decree granting Respondent an injunction and an accounting.
- (5) In failing to award costs to Petitioners.

ARGUMENT.

The Commercial Success Doctrine.

The doctrine is well settled in the law of patents that when the other facts of the case leave the question of invention in doubt, the fact that the subject of the patent has gone into general use and has displaced something else which had previously been employed for analogous uses, is sufficient to turn the scale in favor of the existence of invention. *Smith v. Goodyear Dental Vulcanite Co.*, 93 U. S. 486, 23 L. Ed. 952; *Krementz v. The S. Cottle Co.*, 148 U. S. 556, 560, 37 L. Ed. 558; *Topliff v. Topliff*, 145 U. S. 156, 36 L. Ed. 658; *The Barbed Wire Patent*, 143 U. S. 275, 284, 36 L. Ed. 154; *Magowan v. New York, etc., Packing Co.*, 141 U. S. 332, 35 L. Ed. 781; *Gandy v. Main Belting Co.*, 143 U. S. 587, 36 L. Ed. 272; *Keystone Mfg. Co. v. Adams*, 151 U. S. 139, 38 L. Ed. 103.

It is our contention that the above doctrine must, because of the growing tendencies referred to, be modified to the extent that general use or so-called commercial success is not available to "turn the scale" in those doubtful cases, where the patent owner has been guilty of a misuse of the grant.

Proposition A.

We set forth in the Appendix, pages 21 *et seq.*, certain correspondence which shows the character of the campaign of threats and intimidation indulged in by Respondent in his effort to browbeat an industry and to wrongfully eliminate competition. In the notes ap-

pended thereto we specifically call attention to certain statements which bear out our contentions in this respect.

As is customary in these cases where the patent grant is used for purposes of intimidation, Respondent began his barrage of threats (totally unwarranted at least to the extent of one-half of Petitioners' *letters* and *all* of the mounting frames—the Court of Appeals held Petitioners' lug type letter non-infringing and held Respondent's letter carrying frame patent invalid) during August, 1935 (R. 117) roughly eleven months *before the issue* of the patent in suit. There was no interruption to this campaign from then on, yet, though his patent issued during July, 1936, he brought no suit until February, 1938 (R. 2).

The Court may feel that an oppressed party should, in a case of this kind, resort to injunction proceedings in order to bring about a cessation of the complained of campaign. In actual practice such procedure fails to effect the desired result. Respondent had many salesmen, and a mere *oral* threat by them would be and was sufficient to cause irreparable injury. Customers to whom such threats are made are unwilling to testify. Where, as here, the campaign is nation-wide, the cost of marshalling such evidence is prohibitive. The greatest difficulty is that the threats are disseminated and have accomplished their deadly purpose before that amount of evidence can be collected which would be necessary to furnish a proper basis for injunction proceedings. The one against whom such a campaign is leveled is helpless. The very first widely distributed letter may have been enough to cause irreparable injury, and yet we are convinced that no Court would act merely on the evidence of *one* such letter.

In particular, certain of the letters gave notice to the trade that suits were *being prosecuted* against *mere users*, customers of Petitioners. The fact is, that at the time of

those letters, *no* suits were pending against *any* litigation—threatened user. The injurious effect of such statements on competition, and the free flow of commerce although hard to measure, is nevertheless easily visualized. Competition is quickly destroyed when customers are threatened with a dreaded patent suit.

We believe it proper to point out that the campaign is continuing even after the entry of the decree granting an injunction and an accounting. The only possible reason we can see for this further harassment of Petitioners' customers (mere users) is an overwhelming desire on the part of Respondent to eliminate all competition. We respectfully submit that the Patent Laws do not grant a license for conduct of this character.

Where the articles in question are small (articles of manufacture in this case),* and where the patent owner derives his benefits from the commercialization by his profits due to the *manufacture* and *sale*, there can be no recovery against a mere user, if the judgment against the infringing manufacturer is satisfied.

There can be no question as to Petitioners' ability to satisfy the amount which is liable to be assessed against them in the accounting proceedings. A supersedeas bond** in the sum of \$9,000 is on file in the District Court (R. 305), and in addition thereto, Petitioners have insurance policies to indemnify against loss because of infringement of the Wagner patent (R. 134). The Court of Appeals held that only one-half of Petitioners' letters infringed (the District Court held both types infringements), hence the supersedeas bond is doubly ample.

* The Court will remember that the *frame* patents were held invalid, and the Court (R. 447) says: "We hold, therefore, Wagner's first patent valid and that Adler's letter of the notched flanged-type infringes, but that Adler's letter of the lug-type does not infringe."

** Federal Rules of Civil Procedure, Rule 73 (d) SUPERSEDEAS BOND.—The bond shall be conditioned for the satisfaction of the judgment *in full* together with costs, interest, and damages for delay.—"

Yet, despite all of this, Respondent has, since the entry of the decree in this litigation, filed a suit against a mere user, a customer of Petitioners,—in the *same* jurisdiction, the Seventh Circuit. This suit is entitled as follows:

IN THE UNITED STATES DISTRICT COURT
Northern District of Illinois,
Eastern Division.

Wagner Sign Service, Inc.,
Plaintiff,
vs.
Midwest News Reel Theatres,
Inc.,
Defendant.

Civil Action
No. 1880.

Proposition B.

We feel that the facts set forth in the Petition in connection with the prior art make further discussion as to doubt of the validity of the patent unnecessary. Sufficient to say that unfortified by erroneous conclusions based on commercial success, the patent is invalid because of prior art.

Respectfully,

MAX W. ZABEL,

Counsel for Petitioners.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK.

MAX W. ZABEL, being duly sworn, deposes and says that this Petition for Writ of Certiorari is presented in good faith, that he believes it to be sound in law and fact, and that it is not presented for purposes of delay.

Subscribed and sworn before me this day of Sept., 1940.

.....
Notary Public.

My commission expires

APPENDIX.

Correspondence.

The following correspondence indicates the nature and partial extent (the total extent is of course impossible to determine) of Respondent's campaign of threats and intimidation. In view of the reluctance of recipients of such letters to give them up, because of their unwillingness to become involved in a controversy, it is proof of the magnitude of the campaign that we were able to collect as many as we do have. The correspondence is identified by Exhibit number and Record page. We append to each letter certain comments, indicating the utterly unwarranted and, in some cases, the untruthful statements contained in such letters. Most of these letters are form letters, broadcast throughout the entire industry.

Defendant's Exhibit No. 22.

Record, page 267.

(Letterhead of George A. Auer.)

CHICAGO, August 24, 1935.

Registered.

*Ben Adler Signs
343 South Dearborn Street
Chicago, Illinois*

GENTLEMEN:

It has come to the attention of Mr. E. Wagner of the Wagner Sign Service Comp. Inc., 216 South Hoyne Street, Chicago, that you are manufacturing and distributing Signs which are outright copies of certain structures invented and originated by him and on record in pending applications before the Patent Office. One such signs allegedly installed by you is at the moment in operation at

the South Town Theatre of Balaban and Katz. This sign represents an outright infringement on the rights of Mr. Wagner.

Accordingly I have today notified Balaban & Katz of this infringement, and I herewith notify you, calling to your attention the facts involved. Mr. Wagner will prosecute his rights to the fullest extent, at the proper time, and, if infringement is persisted in, he will take the necessary steps and hold you and all users of his sign structure fully liable and accountable for damages.

A copy of my letter to Balaban & Katz is enclosed for your information, which, I believe will be self-explanatory.

Trusting that you may in fairness to all concerned realize the seriousness of infringement and the consequences resulting therefrom, and discontinue making and/or installing or using Mr. Wagner's structure, and asking you to be good enough and acknowledge receipt of this letter and notify me of your intentions in this matter, I am

Yours very truly,

GEORGE AUER.

G:L

cc: Mr. Imberman, Balaban & Katz

and to

Wagner Sign Service Inc.

NOTE: This letter by Respondent's then patent attorney is dated Aug. 24, 1935, approximately *eleven months before* the issue date of Respondent's patent. The statement that the sign "presents an outright infringement" is, therefore, totally unwarranted. It will be noted that a similar statement was sent at this time to Balaban & Katz, a mere user.

Defendant's Exhibit No. 21.

Record, page 265

(Letterhead of George A. Auer.)

CHICAGO, August 27, 1935.

*Ben Adler Signs
343 South Dearborn Street
Chicago, Illinois*

GENTLEMEN:

Referring to my letter to you of August 24, 1935, wherein I called to your attention that the sign structure which you installed for Balaban & Katz in Chicago constitutes infringement on the sign structure invented and originated by Mr. Erwin Wagner of Wagner Sign Service, Inc., Chicago, I regret that I must notify you in addition to the charge made in my previous letter, that the sign structure which you allegedly installed at the Alger Theater at Detroit, Michigan, is also an outright copy of Mr. Wagner's structure and thus represents additional use of Mr. Wagner's structure and infringement of his rights.

I am sending you enclosed a copy of a letter which I have today written to the United Detroit Theaters, Madison Theater Building, Detroit, Michigan, calling their attention to the true facts in connection with the sign which they are using at the Alger Theater and which, I am informed, was installed by you.

As I have said in my previous letter to you, Mr. Wagner will at the proper time proceed against infringers of his rights and you will therefore see the advisability of discontinuing infringement. Of course, you must have been aware that patent protection was applied for by Mr. Wagner on his structure because the signs manufactured and distributed by Mr. Wagner all bear the notice that Mr. Wagner has patent applications pending. It seems that this public notice alone should have been sufficient to bring to your attention the fact that you are committing infringement in copying Mr. Wagner's structure and distributing it.

I trust that you will discontinue infringement in fairness to all concerned and that you will notify me of your intention to do so.

Yours very truly,
GEORGE AUER.

GAA:RT

cc: United Detroit Theaters
Madison Theater Building
Detroit, Mich.

NOTE: The date of this letter is August 27, 1935. Here again is a statement of infringement although the patent had not as yet issued. Furthermore, it is obvious that neither Ben Adler Signs nor the threatened users could have had any knowledge as to the subject matter of the alleged pending *patent application*. This letter, like the preceding one, alleges copying on the part of Petitioner, but the Court may readily see from illustrations herein that Petitioner's letters do not simulate the patented letter. Respondent itself emphasizes the differences in its advertising. (R. 249, 251, 257, 273, 275, 281, and 285.)

Defendant's Exhibit No. 20.

Record, page 265.

(Letterhead of Wagner Sign Service, Inc.)

CHICAGO, ILL., July 25, 1936.

*National Theatre Supply Co.,
725 W. Wells St.,
Milwaukee, Wis.*

GENTLEMEN:

You will find enclosed a copy of our patent on our letters promised to you.

Read this patent carefully as claims 1, 8 and 9 are quite broad and cover a number of infringers, including Adler.

Yours truly,

WAGNER SIGN SERVICE, INC.,
E. W. L.
E. WAGNER,

Pres.

EW:L

Enc.

NOTE: If such a letter as the above is sent only in isolated instances, and not as part of a campaign, then it would be clearly within the patent owner's right. Such letters were also directed to users of petitioner's non-infringing *lug* type letter.

Defendant's Exhibit No. 18.

Record, page 263.

(Letterhead of Wagner Sign Service, Inc.)

CHICAGO, ILL., July 27, 1936.

*Mr. Lou Reinhimer,
910 S. Michigan Ave.
Chicago, Illinois*

DEAR SIR:

We are informed that you are using in your establishment an illuminated sign comprising a display panel with illuminating means in back of it and silhouette letters removably placed in front of the panel whereby the letters are displayed in clear and sharp silhouette.

The structure is covered in our patent #2,048,040, issued July 21, 1936. We are enclosing a copy of our patent, calling your attention to all claims.

This sign and letter structure was originated by us, as you will see from the original filing date noted on the patent as *February 16, 1934*.

All structures marketed by us carried and carry the public notice, "Patents Pending."

The structure used by you constitutes infringement of our patent rights which we intend to prosecute to the full extent of the law.

Please let us know by return mail your reactions and attitude in this matter.

Yours very truly,

WAGNER SIGN SERVICE, INC.,

E. WAGNER,

E. WAGNER,

Pres.

EW:L

Encl.

NOTE: The first paragraph of this letter is obviously not a truthful definition of Respondent's invention as claimed in the patent, but is broad enough to include the prior Bindhammer device (See p. 8), as well as the non-infringing lug type sign of Petitioners.

Defendant's Exhibit No. 16.

Record, page 262.

(Letterhead of Wagner Sign Service, Inc.)

CHICAGO, ILL., August 19, 1936.

*Western Artkraft Sign Co.
1542 Broadway,
Denver, Colorado*

GENTLEMEN :

You will find enclosed a copy of our patent on attraction letters, and we wish for you to specifically read claims #1, 8, and 9. Study these claims carefully, as we have an imitator who is advertising that he has patents—and yet he *does* violate these claims which were applied for, long prior to his entering this field.

Yours very truly,

WAGNER SIGN SERVICE, INC.,

E. WAGNER,

E. WAGNER,

Pres.

EW:S

Defendant's Exhibit No. 13.

Record, page 260.

(Letterhead of Wagner Sign Service.)

CHICAGO, May 28, 1938.

*Messrs. Berger & Nemes,
Ideal Theatre
2207 S. 6th St.,
Philadelphia, Penna.*

GENTLEMEN :

Our Mr. Herzog has reported that you have secured from the Apex Sign Company, Adler letters that are in violation of two of our patents.

I am quite sure that in securing these letters you will have specified the new Multiple type operation, and I wish to warn you that Adler is infringing 100% on our patent

#2119430, and that suits in this manner are being filed against the customer, not against Adler Sign Letter Co., inasmuch as we are already suing Adler on our other patent.

Mr. Adler's patent insurance at no time has covered against this new patent, and whether or not it is valid today it still would not apply to your case, and not in one iota protect you against our suit.

Inasmuch as it is our desire to collect money from the actual offender, who is Adler or Apex Signs, I would advise that you secure a bond for at least 100% of the value of this job, as without it you are liable to considerable damages.

Very truly yours,

WAGNER SIGN SERVICE, INC.,

E. WAGNER,
E. WAGNER,

Pres.

EW:L

(Customer Request Return.)

NOTE: In paragraph one, the claim is made that Petitioners' signs infringe *two* of Respondent's patents. However patent #2,119,430 was held invalid. At the date of this letter to a mere user, Respondent had not filed suit against a customer of Petitioners'. The statement in reference to Petitioners' patent insurance is utterly unwarranted. The last paragraph is a clear indication of the unwarrantedly *threatening* tenor of Respondent's letters to the trade.

Defendant's Exhibit No. 14.

Record, page 261.

(Letterhead of Wagner Sign Service, Inc.)

June 20th, 1938.

*National Patent Corp.,
135 So. LaSalle St.,
Chicago, Ill.*

Attention: Mr. H. S. Rhett.

DEAR MR. RHETT:

The enclosed advertisement was noted in the Philadelphia-National Exhibitor of June 20th and inasmuch as we are suing Adler's customers on our new patent infringement we are interested in knowing whether or not you are giving him coverage against this patent.

Also, as you probably know, if he is misrepresenting, this is a case for the postal authorities.

Yours very truly,

WAGNER SIGN SERVICE, INC.,
E. WAGNER,
E. WAGNER,

Pres.

EW/D

NOTE: This Wagner letter to Adler's patent protection insurance company is *dated prior* to the institution of any suit against a customer of Petitioners. The last paragraph implies a criminal charge against Petitioner. The letter aims to destroy competition by destroying Petitioners' credit and good name. Respondent, himself, used this type of patent protection. (R. 243.)

Defendant's Exhibit No. 12.

Record, page 259.

(Letterhead of Wagner Sign Service)

CHICAGO, July 2nd, 1938.

*Charles Lee, Architect,
1648 Wilshire Blvd.,
Los Angeles, Calif.*

DEAR SIR:

My attention has been called to the fact that you have been recommending Adler letters and I wish to call your attention to the following facts, we were the originators of this type of silhouette letter and of course, have been imitated by Adler. We are sueing him at this time on our original Patent which he is violating on all his structures.

In addition to the above we have recently designed a 3-in-1 or glass and frame construction upon which we have obtained eighteen good solid claims in our patent number 2119430. This patent creates a possibility of using our large multiple opening as per the enclosed folder, and all modern theatre marquees are being built in this manner as you can see from our installations in and around your territory. It is true that Adler has seen fit to duplicate this structure but he is doing so at the customers risk as we are sueing customers direct on this patent, and no patent insurance has been obtained by the Adler Company or any one else, and I am informed that it can not be obtained against this new patent.

After looking over our literature I trust that you will see fit to recommend our letter as I am sure you will not wish to recommend ideas that are two or three years old.

Very truly yours,

WAGNER SIGN SERVICE, INC.

E. WAGNER.

E. WAGNER,

*President.*EW:JH
Encl.

NOTE: Here is an unqualified statement that Petitioner is infringing "on all his structures". The Court will remember that only one-half of Petitioner's letters were held to infringe Respondent's patent. At the date of this letter no suit had been filed against a customer of Petitioner's.

The Court will appreciate the intimidating effect of these *form* letters wherein it is stated that suits are pending or are to be brought against customers.

As shown by the following letter, even Respondent's attorneys enlisted in this campaign of threats:

Defendant's Exhibit No. 23.

Record, page 268.

(Letterhead of Williams, Bradbury, McCaleb & Hinkle)*

CHICAGO, October 18, 1938.

*Blumfeld Theatre Circuit,
25 Taylor Street,
San Francisco, Calif.*

GENTLEMEN :

Re: Wagner Patent No. 2,048,040
dated July 21, 1936

and

Garner, *et al.* Patent No. 2,119,430
dated May 31, 1938

GENTLEMEN :

We are writing this letter in behalf of Wagner Sign Service, Inc. of this city, the owner of the above mentioned United States Letters Patent relating to silhouette letter signs.

It has come to the attention of our client that Adler

* This letter was sent by registered mail, return receipt requested.

Sign Letter Co., by Mr. B. H. Adler or some other of its representatives, has been offering to sell you a silhouette letter sign (*i. e.*, a sign comprising letters having notched flanges mounted on horizontal rods carried by the frames of the illuminated glass panels in front of which the letters are disposed), which we and our client regard as a clear infringement of each of the aforesaid Letters Patent.

Please be advised that suits under the above mentioned patents are now pending against Adler Sign Letter Co. *et al.*, in the Federal Court here in Chicago, and that the Patio Theatre Co., a purchaser and user of an Adler silhouette letter sign, also has been sued, under both of said Letters Patent, in the Federal Court here in Chicago.

We believe that these suits will be tried and disposed of before the first of the year. It is entirely possible that the pendency of these suits here in Chicago, and the likelihood of decisions therein in the not far distant future, may account for the recent and present strenuous efforts of Adler Sign Letter Co. to dispose of its silhouette letter signs on the far west coast.

We suggest that you familiarize yourselves with these patents and refrain from acquiring, from anyone other than Wagner Sign Service, Inc., any silhouette letter sign of a kind covered by these Letters Patent, or either of them. Our client's west coast representatives have reported that agents of Adler Sign Letter Co. are attempting to impart to their prospective customers some sense of security against the herein mentioned patents by referring to a certain damages only contract which Adler Sign Letter Co. is said to have negotiated with a Eastern casualty company. The "joker" with respect to such a damages only contract may be and frequently is just this:

It promises and undertakes to pay damages assessed by a court against a customer of a manufacturer whose product may be charged to infringe Letters Patent. But it does not undertake to hold such a customer harmless against pecuniary loss and inconvenience which he or it suffers because restrained by injunction from using the merchandise which he has purchased and with respect to which he is said to have been given protection. The "damages" referred to in such a damages

only contract are something quite different from loss resultant from inability to use merchandise because of the issuance of an injunction in a patent suit. And it is injunctive relief which manufacturers operating under patents almost invariably seek when they deem it necessary to sue the user of an infringing product sold by a competitor.

Yours very truly,

WILLIAMS, BRADBURY, McCaleb & HINKLE
WILLIAMS, BRADBURY, McCaleb & HINKLE

Registered Mail
Return Receipt

This letter was also sent to the following customers of Adler (R. 270). (We do not speculate as to the number of other recipients):

Golden State Theatres,
25 Taylor Street,
San Francisco, California.

T. & D. Jr. Enterprises,
25 Taylor Street,
San Francisco, California.

United Theatre Equipment Co.,
25 Taylor Street,
San Francisco, California.

NOTE: The competition-destroying nature of the campaign conducted by Respondent is found in these letters disseminated to the trade by *Respondent's patent attorneys*. We can see no possible reason for these letters other than purposes of harassment, intimidation, and an attempt to destroy competition by unlawful means. They are all the more insidious because seemingly sent under the *guise of a lawful right*.

Claims in Suit.

4. A sign device of the class described comprising, an opaque receptacle, a translucent display panel closing the side thereof, a plurality of light sources arranged within the box remote from the panel for illuminating said panel, a plurality of characters having the visual surface thereof parallel with the panel and flanged about their periphery, and means for holding said characters in position in front of the panel with the rearmost boundaries of the flanges immediately adjacent thereto, said means comprising supporting rods in front of the panel, the flanges being notched to engage said rods.

5. An illuminated sign comprising, a display panel, a light source for illuminating said panel, and a character consisting of an integral substantially rigid body of substantial thickness having an unbroken uniformly finished face, substantially contiguous marginal flanges projecting peripherally from said face toward the back thereof and being integral therewith, and included notches in said flanges whereby said character may be individually and independently mounted in front of said display panel.

6. A sign comprising, in combination, a display frame, relatively thin stationary supporting rods disposed in said frame and extending horizontally thereto, and character means carried by said rods, each of said character means consisting of an integral substantially rigid body of substantial thickness and weight having an unbroken substantially uniformity finished face, integral substantially contiguous flanges projecting from said face uniformly toward the back thereof, and notches in said flanges for engaging said supporting rods in locking engagement therewith, whereby each of said character means may be independently and individually attached to and removed from said supporting rods.

8. An illuminated sign comprising, in combination, an opaque receptacle, a translucent display panel closing the side thereof, illuminating means disposed in said receptacle in back of said panel and spaced therefrom whereby said panel is substantially evenly and uniformly illuminated rod-like mounting means disposed in front of said panel substantially parallel thereto and substantially uniformly spaced therefrom, and specific shaped character

means individually and independently removably and exchangeably secured on said mounting means in front of said panel in perpendicular sliding relation relative to said mounting means, said character means comprising, an opaque body having a visual face disposed substantially in parallel with said panel but spaced therefrom when said character is secured in front thereof, and peripheral substantially contiguous flanges projecting substantially uniformly from said face toward the back thereof, the rearmost boundaries of said flanges being disposed immediately adjacent said panel when said character means is mounted in front thereof, whereby said character means appears in sharp and substantially clearly defined silhouette outline against said uniformly illuminated panel.

The Constitutional Provision.

United States Constitution, Art 1, Sec. 8:

The Congress shall have power * * * to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

Rule 22, C. C. A. 7th Circuit

Rehearing.

Printed petition for rehearing may be filed within 15 days after entry of judgment, and shall be served forthwith by copy upon the opposing party, who within 10 days from such service, may file a printed answer, and the petition shall be determined without oral argument unless otherwise ordered. Thirty copies of such petition and answer shall be filed with the clerk of this court.